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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,066	04/01/2004	David T. Simpson	047968/271920	2685

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EXAMINER
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BELLINGER, JASON R

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/817,066	Applicant(s) SIMPSON, DAVID T.	
	Examiner Jason R. Bellinger	Art Unit 3617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 12-27 and 29-72 is/are pending in the application.
- 4a) Of the above claim(s) 6, 7, 15, 19, 20, 24, 33, 45, 47, 51, 62, 64 and 69-72 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8, 9, 12-14, 16-18, 21-23, 25-27, 29-32, 34-44, 46, 48-50, 52-61, 63 and 65-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Drawings***

1. The drawings were received on 19 June 2006. These drawings are approved.

***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-5, 8, 13-14, 16-18, 21, and 67-68 are rejected under 35 U.S.C. 102(e) as being anticipated by Baker ('167). Baker shows a wheel assembly including a first rotating member (namely wheel 11), which has an exterior surface. A visual element 13 is disposed adjacent to the exterior surface of the first rotating element 11, wherein the visual element 13 has an outer perimeter. A second member 16 is mounted to rotate adjacent the first rotating member 11. The second member 16 defines an opening with an outer perimeter.

The first rotating member 11 and the second member 16 are adapted to move between: a first position in which the outer perimeter of the opening of the second member 16 does not substantially align with the outer perimeter of the visual element 13 (namely when the wheel 11 and visual element 13 are rotating); and a home position in which the outer perimeter of the opening of the second member 16 is substantially aligned with the outer perimeter of the visual element 13 (namely when the wheel 11 and visual element 13 have ceased rotating).

The first rotating member is a wheel 11, while the second member is a wheel spinner 16. The visual element 13, which is mounted to the first rotating member 11, is a substantially planar element configured to engage the wheel 11, such that both elements rotate in unison. The visual element 13 includes a first visual element (namely one of the spokes of element 13), and also includes a second visual element (namely another spoke portion of element 13) disposed adjacent to the exterior of the first rotating member 11 and includes an outer perimeter.

The first rotating member 11 and the second member 16 are mounted to rotate about a common axis. The second member 16 is mounted to rotate relative to the first rotating member 11 by a bearing 35. An aligning mechanism (namely the shape of the second member 16) maintains the second member 16 in the home position relative to the first rotating member 11, by reducing the rotational speed of the second member 16 relative to the first rotating member 11. The second member 16 remains in a substantially fixed radial orientation with respect to the rotation of the first rotating member 11. The second member 16 is weighted (by its shape) to move the second member 16 into the home position when the second member 16 substantially stops rotating.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 9, 22-23, 25-27, 31-32, 34-40, 43-44, 46, and 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker ('167) in view of Wang ('810). Baker contains all of the limitations as set forth in paragraph 10 above, but does not show a plurality of openings in the second member corresponding to multiple visual elements.

Wang ('810) teaches the use of a wheel assembly that includes a first rotating member 3 having a plurality of visual elements (namely the spoke sections). A second member 6 includes a plurality of openings that substantially aligns with the visual members in a home position (see Figure 4). The second member 6 is configured to complement the visual elements of the first rotating member 3 to define a themed appearance. The second member 6 includes a complementary visual element (namely the spokes portions) to complement the appearance of the visual elements of the first rotating member 3. An alignment mechanism (namely weight 61) is affixed to the second member 6 to maintain the second member 6 in the home position. The second member 6 is a spinner and rotates relative to the first rotating member 3 through a bearing. The outer perimeter of a first opening has the same shape as a first visual element (namely both outer perimeters are curved).

Therefore from this teaching, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the second member (spinner) of Baker with openings that correspond to a plurality of visual element of the first rotating member in order to provide a symmetrical and aesthetically pleasing assembly.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baker ('167) in view of Hoxie. Baker contains all of the limitations as set forth in paragraph 10 above, but does not show the visual element being themed indicia.

Hoxie teaches the use of a first rotating member (namely a wheel cover) having a visual element that is themed indicia (in this case that of a pistol cylinder). Therefore from this teaching, it would have been obvious to one of ordinary skill in the art at the time of the invention to form the visual element of Baker as themed indicia dependent upon the aesthetic taste, hobbies, etc of the owner.

7. Claims 29-30, 41-42, 53-61, 63, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker ('167) in view of Wang ('810) as applied to claims 9, 11, 22-23, 25-28, 31-32, 34-40, 43-44, 46, and 48-50 above, and further in view of Hoxie. Baker as modified by Wang does not show the themed assembly resembling a loaded revolver cylinder.

Hoxie teaches the use of a themed assembly that resembles a loaded revolver cylinder, which includes a firing end of a bullet. Six bullets are shown. Therefore from this teaching, it would have been obvious to one of ordinary skill in the art at the time of the invention to form the visual element of Baker as modified by Wang to resemble a loaded revolve cylinder dependent upon the aesthetic taste, hobbies, etc of the owner.

While Baker as modified by Wang (in this case, specifically Wang) does not show the second member being formed to resemble a revolver cylinder with six openings, it would have been obvious to one of ordinary skill in the art at the time of the invention to

form the second member of Baker as modified by Wang in such a manner to correspond to the firing ends of the bullets shown by Hoxie to complete the themed assembly. The second member would then be substantially circular in shape.

8. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baker ('167) in view of Weld ('975). Baker contains all of the limitations as set forth in paragraph 10, but does not show the wheel spinner (aka second member) having a substantially circular body with circular openings.

Weld teaches the use of a wheel element having a substantially circular body with interior and exterior surfaces, and an outer perimeter. A median region is disposed between the outer perimeter and a central mounting area. The circular body defines a plurality of circular openings uniformly distributed about the median area of the element, and a plurality of substantially semi-circular recesses disposed adjacent to the outer perimeter and substantially between adjacent openings.

Therefore from this teaching, it would have been obvious to one of ordinary skill in the art at the time of the invention to form the spinner (aka second member) of Baker with the structure taught by Weld, dependent upon the desired aesthetic appearance of the assembly.

9. Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baker ('167) in view of Wang ('810) and in further view of Hoxie as applied to claims 29-30, 41-42, 53-61, 63, and 65 above, and further in view of Weld ('975). Baker as modified

by Wang and Hoxie does not show the outer periphery of the spinner (aka the second member) including substantially semi-circular recesses about its circumference.

Weld teaches the use of an element having a plurality of substantially semi-circular recesses disposed adjacent about the outer perimeter. Therefore from this teaching, it would have been obvious to one of ordinary skill in the art at the time of the invention to form the spinner (aka second member) of Baker as modified by Wang and Hoxie with outer peripheral semi-circular recesses, dependent upon the desired aesthetic appearance of the assembly.

### ***Response to Arguments***

10. Applicant's arguments filed 19 June 2006 have been fully considered but they are not persuasive. The Applicant argues that the Baker ('167) reference does not meet all of the limitations of the claims. Specifically, the Applicant argues that the outer perimeters of the first and second decorative members of Baker are different and "thus never "substantially align"; further stating that the outer perimeters never align.

Regardless of the fact that the first decorative member 13 and the opening of the second decorative member 16 have different outer perimeters, Figure 1 clearly shows those outer perimeters "substantially" aligned. Namely, multiple portions of the outer perimeter of the opening of the second decorative member 16 overlaps a portion of the outer perimeter of the first decorative member 13. Therefore, Baker ('167) meets the limitations of the claims.



The Applicant further argues that the Baker reference does not show a “first position” or a “home position”. It should be noted that the limitations of “first position” and “home position” are not sufficiently defined by the claims, and thus does not exclude the Examiner’s definition of these limitations as set forth in the second paragraph of section 3 of the rejection above.

The Applicant argues that Baker does not show an “aligning mechanism for maintaining” or a “facilitating mechanism” for moving the second member in/to the home position. However, given the fact the discussion immediately above, the weight that retains the second member 16 of Baker in position with the ground, also maintains that member in a “home position” as defined by the Examiner in the second paragraph of section 3 of the rejection above, and thus meets the limitations of the claims.

11. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, the Applicant argues that the Baker and Wang ('810) references have different structures. First, it should be noted that the Wang ('810) reference has not been literally combined with the Baker reference. Instead, the Wang reference was

used to teach the related shapes of first and second decorative elements. The Wang reference teaches the limitations of the claims, as set forth in paragraph 5 above.

**12.** In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, the Applicant argues that one of ordinary skill in the "complex wheel spinners" art would look to a design patent for structure. First, it should be noted that the Hoxie reference was only used to teach the aesthetic design of a revolver cylinder on a wheel cover, and was not literally combined with the Baker reference. Furthermore, the Hoxie reference was not relied upon for any physical structure of the wheel spinner mechanism.

### ***Conclusion***

**13.** Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason R. Bellinger whose telephone number is 571-272-6680. The examiner can normally be reached on Mon - Thurs (9:00-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason R Bellinger  
Primary Examiner  
Art Unit 3617

Handwritten signature of Jason R Bellinger and the date 9/5/00.